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9 GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS

FILED
AUG 27 2007

HARD W. WITKIN
NORTHERN DISTRICT COURT
OF CALIFORNIA

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 HO RIM KAM, } Case No.: C07-4414 SPA
13 Petitioner, }
14 vs. }
15 MARTIN LUTHER KING, JR.-MARCUS } CERTIFICATE OF SERVICE OF NOTICE
16 GARVEY SQUARE COOPERATIVE } TO ADVERSE PARTY OF REMOVAL TO
17 BOARD OF DIRECTORS, } FEDERAL COURT
18 Respondent. }
19

3

20 I, Kim Daleiden, certify and declare as follows:

21 I am over the age of 18 years and not a party to this action.

22 My business address is Kaufman Dolowich & Voluck LLP, 351 California Street, Suite
23 500, San Francisco, California 94104, which is located in the City, County and State where the
24 service described below took place.

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1 On August 27, 2007, I caused to be served by hand, a copy of the NOTICE TO
2 ADVERSE PARTY OF REMOVAL TO FEDERAL COURT dated August 27, 2007, a copy of
3 which is attached to this Certificate, on Petitioner's counsel:

4 Robert Borton, Esq.
5 Christin J. Hill, Esq.
6 Daniel Kaufman, Esq.
7 Heller Ehrman LLP
8 333 Bush Street
9 San Francisco, CA 94104-2878
10 Tel: (415) 772-6000
11 Fax: (415) 772-6268
12 Attorneys for Petitioner HO RIM KAM

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct.

15 Executed on August 27, 2007

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17 Kim Daleiden
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13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15 HO RIM KAM,) Case No.: CPF 07-507493
16 Petitioner,) LIMITED CIVIL CASE
17 vs.) ACTION FILED: August 6, 2007
18 MARTIN LUTHER KING, JR.-MARCUS) NOTICE TO ADVERSE PARTY OF
19 GARVEY SQUARE COOPERATIVE) REMOVAL TO FEDERAL COURTS
20 BOARD OF DIRECTORS,)
21 Respondent.)
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19 TO PETITIONER HO RIM KAM AND HIS ATTORNEYS OF RECORD:

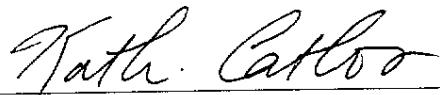
20 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in the

21 United States District Court for the Northern District of California on August 27, 2007.

22 A copy of said Notice of Removal is attached to this notice and is served and filed
herewith.

23 DATED: August 27, 2007

KAUFMAN DOLOWICH & VOLUCK LLP

24
25 
26

27 Katherine S. Catlos, Esq.
28 Attorneys for Respondent MARTIN LUTHER
KING, JR.-MARCUS GARVEY SQUARE
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13 GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 HO RIM KAM,) Case No.:
18 Petitioner,)
19 vs.) NOTICE OF REMOVAL OF ACTION
20 MARTIN LUTHER KING, JR.-MARCUS) UNDER 28 USC §1441(b)
21 GARVEY SQUARE COOPERATIVE) (FEDERAL QUESTION)
22 BOARD OF DIRECTORS,
23 Respondent.

24 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

25 PLEASE TAKE NOTICE THAT RESPONDENT MARTIN LUTHER KING, JR.-
26 MARCUS GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS hereby removes to
27 this Court the State Court action described below.

28 1. On August 6, 2007, an action, specifically a Petition and Application for Issuance of
29 Peremptory Writ of Mandamus was commenced in the Superior Court of the State of California
30 in and for the County of San Francisco, entitled HO RIM KAM VS. MARTIN LUTHER KING,
31 JR.-MARCUS GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS, as Case
32 Number CPF-07-507493 (hereto as Exhibit 1).

1 2. The first date upon which Respondent received a copy of said Petition and ~~Application~~
 2 for Issuance of Peremptory Writ of Mandamus was on August 8, 2007. (A copy of the ~~Proof of~~ of
 3 Service by hand delivery is attached hereto as Exhibit 2)

4 3. This action is a civil action of which this Court has original jurisdiction under 28
 5 U.S.C. §1331, and is one which may be removed to this Court by Respondent pursuant to the
 6 provisions of 28 U.S.C. §1441(b) in that it arises under the United States Housing Act of 1937,
 7 42 USC §1437 *et. seq.* and its implementing regulations, including but not limited to: 3 CFR,
 8 part 5 (General HUD Program Requirements), 24 CFR, part 17 (Administrative Claims),
 9 Federal Tort Claims Act); and 24 CFR, part 28 (Fraud). Petitioner's claim is also one that
 10 technically implicates 5 U.S.C. §706 and arguably the Fifth Amendment right to due process
 11 contained in the United States Constitution.

12 4. The instant Petition for Peremptory Writ of Mandamus protests actions taken by the
 13 Federal Government. Specifically, Petitioner has premised his claim for relief on the United
 14 States Department of Housing and Urban Development's purported incorrect conclusion that
 15 Petitioner had fraudulently concealed his Illinois home on multiple occasions in order to receive
 16 Section 8 housing subsidies. Because Petitioner, on multiple occasions, misrepresented his
 17 assets on his HUD Form 50059s, HUD concluded that he owed the federal government
 18 additional rent ("carrying charges"). Respondent's By-laws provide for automatic removal of a
 19 *Board member* should the Petitioner fall behind in rent by 30 days. In addition, the By-laws call
 20 for removal of an *Officer* by a vote of the Board of Directors. Since HUD concluded that
 21 Petitioner was behind in rent by 30 days, he was automatically removed as a Director and
 22 subsequently removed as Treasurer by a majority vote of the Board of Directors. Thus, the issue
 23 posed by the Petition, whether Petitioner can properly be a member (or even a Treasurer) on the
 24 Board of Directors, implicates federal law and impugns actions taken by HUD.

25 5. The relief sought also creates a substantial issue of federal law. Petitioner has
 26 requested that the Court determine whether Petitioner properly reported his income per federal
 27 housing laws in order to be eligible for Section 8 housing subsidies and hence, not be in arrears
 28 of rent. HUD concluded that he had not properly reported his income. Petitioner essentially
 requests that the Court issue an order reversing HUD's conclusion regarding his automatic

1 removal (per the By-laws) from the Board of Directors and compelling his reinstatement to the
 2 Board of Directors. Consequently, Petitioner's relief is dependent upon interpretation of federal
 3 laws regarding eligibility, recertification of, and verification of income for Section 8 recipients.

4 6. In short, federal question jurisdiction is proper because the Federal Government has a
 5 strong interest in ensuring persons who have fraudulently reported assets in order to obtain
 6 federal subsidies not be a member of a Boards of Directors (with decision-making powers) over
 7 housing projects that the Federal Government subsidizes.

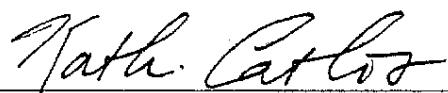
8 7. Although HUD is curiously not a named respondent in this matter, Petitioner has
 9 imputed HUD's conduct to Respondent, thus warranting federal court jurisdiction. The
 10 averments in the Petition and its supporting papers show that the relevant By-laws which govern
 11 the conduct of the project and the Board of Directors automatically expel Petitioner from the
 12 Board due to his own conduct in contravention of HUD guidelines regarding
 13 eligibility/verification of Section 8 recipients per federal housing laws. The gravamen of
 14 Petitioner's Petition is that HUD was wrong and that his removal from the Board was essentially
 15 unconstitutional; violated his due process rights; and/or arbitrary, capricious, or was an abuse of
 16 HUD's discretion, and hence of no validity. It is therefore apparent that this controversy
 17 concerns the validity of HUD's actions, thus conferring this Court with federal question
 18 jurisdiction.

19 8. At this time, there are no other Defendants or Respondents other than the present
 20 Respondent MARTIN LUTHER KING, JR.-MARCUS GARVEY SQUARE COOPERATIVE
 21 BOARD OF DIRECTORS.

22 Respectfully submitted,

23 DATED: August 27, 2007

24 KAUFMAN DOLOWICH & VOLUCK LLP

25 

26 Katherine S. Catlos, Esq.
 27 Attorneys for Respondent MARTIN LUTHER
 28 KING, JR.-MARCUS GARVEY SQUARE
 COOPERATIVE BOARD OF DIRECTORS